

TOWN OF TIVERTON
ZONING BOARD OF REVIEW
MINUTES

MARCH 5, 2008
7:30 P.M.

The following petitions were received and were heard by the Tiverton Zoning Board on March 5, 2008 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairman David Collins, Jay Jackson, Richard Taylor, Lise Gescheidt, Michael Fairhurst & Raymond LaFazia (alternate).

Also present were: Peter Ruggiero, Town Solicitor, Mary Ann Escobar, Court Reporter and Gareth Eames, Building Inspector.

1. A petition has been received by Benjamin C. and Martha W. Reed and Thomas and Christine M. Bandoni of Tiverton, RI requesting a variance to Article 5 Section 1 of the Tiverton Zoning Ordinance in order to transfer land area from one lot to another and to maintain existing structures located at 2071 Main Road, Tiverton, RI being Block 74 Card 4 and 2091 Main Road, Tiverton, RI being Block 74 Card 3 respectively on Tiverton Tax Assessor's Maps with less than required lot area and closer to the building setbacks than are currently allowed in an R40 zone.

DECISION: Attorney Turner Scott appeared on behalf of the Petitioners. He stated the plan is to take 4,160 feet from the Reed lot and transfer it over to the Bandoni lot which is Lot 3 and basically the property will then have about the same amount equal space. The purpose for this is to be able to provide sufficient parking and safe parking so the Bandonis can negotiate on site and pull off rather than back out into Main Road as that property had been doing for a number of years. Mr. Scott assured the board there is no intent at this point to pave that area or to do anything other than to use it and it become a part of the Bandoni property. It has been to the planning board and the planning board has approved it subject to getting variances from the zoning board.

Mr. Thomas Bandoni testified as follows: He has been living there for approximately two years and wants to make a safe egress from the property. Currently there is not enough room to turn around and he has to back out onto Main Road. He does not plan on paving the driveway, nor will he be using it for any business purposes. It is just for personal use.

Mr. Benjamin Reed testified that he has seen the difficulty the Bandonis have had trying to exit their driveway and have decided to sell them this piece so it will be safer for them as well. He also stated that he does not do any commercial or business use out of his property.

The Board went into Executive Session to discuss the matter. Mr. Taylor made a motion to grant the required variance in that it's the minimum required, it's a matter of health and safety, that it will not substantially change the current use of the property. It also is not contrary to the public interest and this is the least variance that you could do to accomplish what they are trying to accomplish for the safe parking area with egress and entrance there. Mr. Taylor also moved to put a restriction that there will be no commercial activity as a result of this land transfer on this piece of property, no expansion of existing structures, vertical or horizontal, without coming back before the board, that the transfer area remain unpaved and that they use the existing curb cuts. Ms. Gescheidt seconded. The vote was unanimous. Voting were Mr. Collins, Mr. Jackson, Mr. Taylor, Ms. Gescheidt & Mr. Fairhurst.

2. A petition has been received by Roland G. Vigeant of 22 Primrose Drive, Riverside RI requesting a variance to Article V Section 1 of the Tiverton Zoning Ordinance in order to construct a new single family dwelling located at Ocean View Avenue, Tiverton, RI being Block 45 Card 24 on Tiverton Tax Assessor's Maps closer to the front yard setback than is currently allowed in a R30 zone.

DECISION: Mr. Vigeant appeared before the board and stated he wishes to put a three bedroom house 24 by 43 on this lot. When he originally looked at the lot he thought it was 7,500 square feet. He then found out it was only 6,000 square feet. The septic system has already been approved by DEM and is grandfathered in. He cannot move the location of the septic. He is looking for relief on the 25 foot setback. His house would be 13 feet back as described on the plan. Mr. Vigeant also is requesting relief for four to five feet of height on his house.

Many neighbors appeared before the board and expressed their concern about the run-off and the septic system.

The Board went into executive session to discuss the matter. After a lengthy discussion, the Board recommended Mr. Vigeant request a continuance to provide the board with more information regarding three aspects. (1) whether this is a legal lot of record, (2) more accurate number on relief for height and (3) a plan to deal with the drainage. Mr. Vigeant requested a continuance until next month. Mr. Jackson made a motion to continue until next month. Ms. Gescheidt seconded. The Vote was unanimous. Voting were Mr. Collins, Mr. Jackson, Mr. Taylor, Ms. Gescheidt & Mr. Fairhurst.

3. A petition has been received by Roland G. Vigeant of 22 Primrose Drive, Riverside RI requesting a special use permit from Article VII Section 4.b. of the Tiverton Zoning Ordinance in order to construct a new single family dwelling at Ocean View Avenue, Tiverton, RI being Block 45 Card 24 on Tiverton Tax Assessor's Maps higher than allowed in a R30 zone.

DECISION: Mr. Vigeant appeared before the board and stated he wishes to put a three bedroom house 24 by 43 on this lot. When he originally looked at the lot he thought it was 7,500 square feet. He then found out it was only 6,000 square feet. The septic system has already been approved by DEM and is grandfathered in. He cannot move the location of the septic. He is looking for relief on the 25 foot setback. His house would be 13 feet back as described on the plan. Mr. Vigeant also is requesting relief for four to five feet of height on his house.

Many neighbors appeared before the board and expressed their concern about the run-off and the septic system.

The Board went into executive session to discuss the matter. After a lengthy discussion, the Board recommended Mr. Vigeant request a continuance to provide the board with more information regarding three aspects. (1) whether this is a legal lot of record, (2) more accurate number on relief for height and (3) a plan to deal with the drainage. Mr. Vigeant requested a continuance until next month. Mr. Jackson made a motion to continue until next month. Ms. Gescheidt seconded. The Vote was unanimous. Voting were Mr. Collins, Mr. Jackson, Mr. Taylor, Ms. Gescheidt & Mr. Fairhurst.

4. A petition has been received by Paul & Pamela Duckett of 95 Lawrence Court, Tiverton, RI requesting a variance from Article V Section 1 of the Tiverton Zoning Ordinance in order to raze the existing dwelling (trailer) and to construct a new single family dwelling located at 25 Delano Island, Tiverton, RI being Block 170 Card 15 on Tiverton Tax Assessor's Maps closer to the front yard setback than is currently allowed in a R80 zone.

DECISION: Michael Duckett, the son of Paul & Pamela Duckett, appeared before the board. Paul Duckett was present and authorized his son to speak on his behalf. He stated he wishes to remove the existing trailer and build a one bedroom home in the exact footprint.

Also Mr. Bassam Nader from American East Engineers appeared before the board and stated he has prepared plans for a state of the art bottomless sand filter to replace the existing cesspools and said plan has been approved by DEM. What they are looking for is a special use permit for being within the 125 feet of Nanaquaket Pond. He also stated that there was a misunderstanding about building height. They are not looking for relief for maximum building height. They are proposing to rebuild the existing home and raise

it to meet flood level elevation. They will need 14 feet of relief from the front setback in order to do so.

The Board went into Executive Session. Ms. Gescheidt made a motion to approve the dimensional variance and also allow the septic system to be put 50 feet from the pond as opposed to 125 feet. Ms. Gescheidt stated there are special conditions and circumstances that exist which are peculiar to the structure and the land involved that are not applicable to other land and it's not due to a physical or economic disability of the applicant. Also, that it's not contrary to the public interest and that to enforce the literal application would result in unnecessary hardship to the applicant. That the reason for the variance is not because of any prior action caused by the applicant and it will not alter the general character of the surrounding area and that this is the least variance that the board can grant that can the afford the relief that they have requested and if not allowed the board would be denying the owner of the beneficial use of his property. Ms. Gescheidt also wanted to put a restriction that this dwelling does not encroach any greater on the setback than stated. Mr. Fairhurst seconded. The Vote was unanimous. Voting were Mr. Collins, Mr. Jackson, Mr. Taylor, Ms. Gescheidt & Mr. Fairhurst.

5. A petition has been received by Paul & Pamela Duckett of 95 Lawrence Court, Tiverton, RI requesting a special use permit from Article VII Section 4.b. and Article VI, Section 7.a.(1) of the Tiverton Zoning Ordinance in order to construct a new single family dwelling higher than currently allowed and to install an I.S.D.S. within 125 feet of the Nanaquaket Pond located at 25 Delano Island, Tiverton, RI being Block 170 Card 15 on Tiverton Tax Assessor's Maps which is only allowed by Special Use permit.

DECISION: Michael Duckett, the son of Paul & Pamela Duckett, appeared before the board. Paul Duckett was present and authorized his son to speak on his behalf. He stated he wishes to remove the existing trailer and build a one bedroom home in the exact footprint.

Also Mr. Bassam Nader from American East Engineers appeared before the board and stated he has prepared plans for a state of the art bottomless sand filter to replace the existing cesspools and said plan has been approved by DEM. What they are looking for is a special use permit for being within the 125 feet of Nanaquaket Pond. He also stated that there was a misunderstanding about building height. They are not looking for relief for maximum building height. They are proposing to rebuild the existing home and raise it to meet flood level elevation. They will need 14 feet of relief from the front setback in order to do so.

The Board went into Executive Session. Ms. Gescheidt made a motion to

approve the dimensional variance and also allow the septic system to be put 50 feet from the pond as opposed to 125 feet. Ms. Gescheidt stated there are special conditions and circumstances that exist which are peculiar to the structure and the land involved that are not applicable to other land and it's not due to a physical or economic disability of the applicant. Also, that it's not contrary to the public interest and that to enforce the literal application would result in unnecessary hardship to the applicant. That the reason for the variance is not because of any prior action caused by the applicant and it will not alter the general character of the surrounding area and that this is the least variance that the board can grant that can afford the relief that they have requested and if not allowed the board would be denying the owner of the beneficial use of his property. Ms. Gescheidt also wanted to put a restriction that this dwelling does not encroach any greater on the setback than stated. Mr. Fairhurst seconded. The Vote was unanimous. Voting were Mr. Collins, Mr. Jackson, Mr. Taylor, Ms. Gescheidt & Mr. Fairhurst.

6. A petition has been received by Christopher & Valerie Mercer of 10 Steven Street, Tiverton, RI requesting a variance from Article V Section 1 and Article VI Section 3.b. of the Tiverton Zoning Ordinance in order to maintain an above ground swimming pool located at 10 Steven Street, Tiverton, RI being Block 57 Card 10 on Tiverton Tax Assessor's Maps closer to the front yard setback than currently allowed and located in the side yard which is not allowed in a R40 zone

DECISION: Mr. Christopher Mercer appeared before the board and stated they bought the house in 2006 and the pool was already there and this past August he received a letter from the Building Inspector saying the pool was illegally installed without the right permits. He stated that there really is no place to move the pool because of the contours of his land and the septic system.

The Board went into Executive Session. Mr. Fairhurst made a motion to grant the variance to Article V Section 1 and Article 6, Section 3B for the swimming pool in that the special conditions exist which is the shape the slope of the land exist and are not due to any physical or economic disability of the applicant. Such relief will not be contrary to the public interest and that it will not alter the general character of the surrounding area and the intent and purpose of the zoning ordinance or the comprehensive plan especially since it's been there eight years. Mr. Gescheidt seconded. The Vote was 4-1. Voting for were Mr. Collins, Mr. Fairhurst, Mr. Jackson & Ms. Gescheidt. Voting against was Mr. Taylor for reasons he thinks it's not the least relief possible.

7. A petition has been received by Chris & Faye Roemlein of 73 High Hill Road, Tiverton, RI requesting a variance to Article VI Section 3.b. of the Tiverton Zoning Ordinance in order to construct a garage located at 73 High Hill Road, Tiverton, RI being Block 121 Card 28 on Tiverton Tax Assessor's Maps in the front of the existing dwelling which is not allowed in a R80 zone.

DECISION: Mr. Chris Roemlein appeared before the board and stated he wishes to construct a three-car garage onto his existing home. He has lived there for four years and loves it here. He looked at different positions and different angles, didn't wish to cut down any trees and impact any of the surrounding area. His architect came up with a plan to provide a three foot berm on the road side stretching around to the neighbor's side so it can blend into the area. He stated that the neighbor to the south of him said it was okay, but to put some shrubbery and plants to minimize it.

The Board went into Executive Session to discuss this petition. Ms. Gescheidt made a motion to grant the variance, based on specials conditions, the configuration of the land and the location of the house. It's the only logical place to put it. Also, that the relief won't be contrary to the public interest and that any unnecessary hardship is not the cause of the applicant. The general character of the surrounding area will not *be* impaired and this is the minimal variance based on the circumstances. Also, there will be a restriction not to permit any type of residential use within the garage or any additional use or strain on the septic system. Mr. Taylor seconded. The Vote was unanimous. Voting were Mr. Collins, Mr. Jackson, Mr. Taylor, Ms. Gescheidt & Mr. Fairhurst.